

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT FOR THE
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 UNITED STATES OF AMERICA, on behalf
12 of its agencies, DEPARTMENT of the
13 NAVY, THE DEFENSE THREAT
14 REDUCTION AGENCY, THE UNITED
15 STATES NATIONAL NUCLEAR
16 SECURITY ADMINISTRATION, and the
17 FEDERAL BUREAU OF
18 INVESTIGATION,

19 PLAINTIFFS,

20 v.

21 KITSAP COUNTY and the KITSAP
22 COUNTY DEPARTMENT OF
23 EMERGENCY MANAGEMENT,

24 DEFENDANTS.

CASE NO.

COMPLAINT FOR INJUNCTIVE
RELIEF

25 **INTRODUCTION**

26 1. This is an action by the United States of America, on behalf of its agencies, the
27 Department of the Navy, the Defense Threat Reduction Agency, the National Nuclear
28 Security Administration, and the Federal Bureau of Investigation (collectively, the “Federal

1 Agencies”) against Defendants Kitsap County (“Kitsap County”) and the Kitsap County
2 Department of Emergency Management (“Kitsap Emergency Management”, collectively,
3 “Kitsap County” or “Defendants”). The Federal Agencies seek an Order enjoining
4 Defendants from disclosing sensitive and protected national security information in response
5 to requests Kitsap Emergency Management received under the Washington State Public
6 Records Act (“PRA”), RCW 42.56 et seq., and providing declaratory judgment, pursuant to
7 the Declaratory Judgment Act, 28 U.S.C. § 2201.

8 2. Kitsap Emergency Management obtained sensitive and protected national
9 security information from the Federal Agencies when it participated with other state and local
10 emergency response agencies in various federally administered Nuclear Weapon Accident
11 Incident Training Exercises (“NUWAIXs”) conducted on Naval Base Kitsap Bangor, in
12 Kitsap County, Washington. In connection with these NUWAIXs, participants from state,
13 county and local agencies were provided access to federally protected sensitive national
14 security information on the condition that the information would be used solely for purposes
15 of the exercise, and not disclosed for any other purpose without the consent of the Federal
16 Agencies.

17 3. In addition to the express conditions placed on Kitsap Emergency
18 Management’s access to the federally protected sensitive national security information, the
19 information is also covered by two federal non-disclosure statutes: 10 U.S.C. § 128,
20 prohibiting unauthorized disclosure of unclassified nuclear information (“UCNI Statute”), and
21 10 U.S.C. § 130e, prohibiting unauthorized disclosure critical infrastructure security
22 information (“CISI Statute”).

23 4. Although the federal non-disclosure UCNI and CISI statutes would pre-empt
24 any state mandatory disclosure obligation laws to the contrary, no pre-emption issue arises in
25 Washington State, because the PRA’s mandatory public disclosure provisions excludes
26 information or records protected from disclosure by a federal statute. *See* RCW 42.56.070(1)
27 (excluding information protected from disclosure by “other statutes”).
28

5. Furthermore, the Washington State legislature has also created a specific PRA exemption for “security information,” exempting from the mandatory public disclosure provisions of the PRA precisely the kind of emergency response information that is at issue in this case. *See* RCW 42.56.420.

6. In spite of these state exemptions and federal non-disclosure laws, which make it clear that the PRA's mandatory disclosure provisions do not apply to the sensitive national security information at issue in this case, Defendants have notified the Federal Agencies that they intend to unilaterally release the national security protected information to the requesters if the Federal Agencies do not obtain by December 16, 2015, an Order enjoining Defendants from doing so.

7. The imminent threat that Defendants will unlawfully disclose the sensitive protected federal information at issue in this case has forced the Federal Agencies to initiate this lawsuit for injunctive and declaratory relief. Such relief is authorized as a matter of federal statute and federal common law. It is also available under the provisions of the PRA, which make injunctive relief available for third parties, to prevent state and local agencies from making unauthorized disclosures of sensitive information covered by PRA exemptions.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1345.

9. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391(b)(1) and (b)(2) because Defendants reside and transact business within the Western District of Washington, the events complained of occurred in the Western District of Washington, and the threats complained of will occur there. Finally, the records that the Federal Agencies seek to protect are located in the Western District of Washington in Defendants' possession.

PARTIES

10. The United States Department of the Navy (the “Navy”) is a Department of the United States Department of Defense. The Navy owns and operates Naval Base Kitsap, a U.S. Navy base located on the Kitsap Peninsula in Washington State, which was created in 2004 by merging four separate installations within Kitsap County under one Commanding Officer. The Mission of Naval Base Kitsap is to serve as the home base for the Navy’s fleet throughout West Puget Sound and to provide base operating services. Naval Base Kitsap Bangor serves as the home port of the Navy’s Pacific fleet of eight *Ohio*-class submarines that are capable of launching TRIDENT missiles, and is the only installation on the West Coast that is equipped to support that fleet. The TRIDENT program, which includes the *Ohio*-class submarines, plays a critical role in the United States’ program of nuclear deterrence, which is a critical component of national security.

11. The Defense Threat Reduction Agency (“DTRA”) is an agency within the United States Department of Defense and is the official combat support agency for countering weapons of mass destruction (chemical, biological, radiological, nuclear, and high explosives). DTRA's main functions are threat reduction, threat control, combat support, and technology development.

12. The Federal Bureau of Investigation (the “FBI”) is the domestic intelligence and security service of the United States, which simultaneously serves as the nation’s primary federal law enforcement organization. Operating under the jurisdiction of the U.S. Department of Justice, FBI is concurrently a member of the U.S. Intelligence Community and reports to both the Attorney General and the Director of National Intelligence. A leading U.S. counterterrorism, counterintelligence, and criminal investigative organization, the FBI has jurisdiction over violations of more than 200 categories of federal crimes.

13. The United States National Nuclear Security Administration (“NNSA”) is a semi-autonomous agency of the United States Department of Energy. It works to improve national security through the military application of nuclear energy. The NNSA maintains

1 and improves the safety, reliability, and performance of the United States nuclear weapons
2 stockpile through the use of science, technology, and engineering. It is also responsible for
3 many nuclear nonproliferation, counter-terrorism, counter-proliferation, and radiological
4 emergency response efforts for the United States, along with the naval reactors for the Navy.

5 14. Defendant Kitsap County is located in the State of Washington. As of the 2010
6 census, its population was 251,133. Its county seat is Port Orchard, and its largest city is
7 Bremerton. The Navy is the largest employer in the county, with facilities and naval
8 activities located at four Naval Base Kitsap sites (Naval Base Kitsap Bremerton, Naval Base
9 Kitsap Bangor, Naval Base Kitsap Keyport and Naval Base Kitsap Manchester).

10 15. Defendant Kitsap Emergency Management is a component of Kitsap County.
11 Kitsap Emergency Management is responsible for providing the emergency and disaster
12 needs of the greater Kitsap County area including the cities of Bainbridge Island, Bremerton,
13 Poulsbo, Port Orchard and the unincorporated areas of Silverdale.

14 **ALLEGATIONS**

15 *NUWAIX Training Exercises*

16 16. The consequences of a nuclear weapon accident or incident pose a serious threat
17 to national security and public safety. The Federal Agencies have developed procedures for
18 responding to such incidents. Under these procedures, all nuclear weapon incidents shall be
19 considered the result of hostile acts until proven otherwise. These procedures, therefore,
20 outline the steps for investigating such incidents, as well as the steps for mitigating the
21 damage. In order to improve preparedness and response capabilities, the Federal Agencies
22 conduct periodic training exercises under the Nuclear Weapon Incident Training (“NWIRT”)
23 program. These exercises are designed to establish a learning environment to practice
24 responding to simulated incidents. The exercises also provide the agencies the opportunity to
25 evaluate and assess response times and effectiveness so that improvements may be made to
26 the procedures. The exercises usually involve the participation of state and local departments
27
28

1 and agencies because state and local partners would be an integral part of any emergency
2 response.

3 17. In particular, as part of the NWIRT program, the Navy together with DTRA,
4 NNSA, and the FBI conduct periodic training sessions at Naval Base Kitsap Bangor, entitled
5 Nuclear Weapons Accident Incident Exercises “NUWAIXs”). As relevant to this case,
6 various training sessions began in July 2013 with a series of five Mini-NUWAIX sessions –
7 which took place in July 2013, Sept. 2013, June 2014, September 2014, and October 2014.
8 These mini-exercises culminated in a full scale emergency training exercise known as
9 NUWAIX 15, which took place May 5-7, 2015.

10 18. Kitsap Emergency Management was invited together with several other state
11 and local agencies with emergency response responsibilities to participate in these emergency
12 training exercises. Because a significant amount of the information related to the training was
13 sensitive national security information, Navy Region Northwest (“NRNW”), repeatedly
14 informed Kitsap Emergency Management and the other participants of their obligation to
15 protect the information and not release the information to third parties. For example, the
16 introductory materials provided to Kitsap Emergency Management and other participants for
17 the Mini-NUWAIX 2014-01 stated as follows:

18 The NRNW Mini-NUWAIX 2014-01 is an unclassified exercise.
19 Due to the nature of the event, some exercise material and player
20 discussions, however, in the Region Operations Center and site
21 locations could be classified SECRET. All precautions must be
22 taken to safeguard classified information. Also there may be some
23 exercise material intended for the exclusive use of exercise planners
24 and evaluators, but players may view other materials that are deemed
25 necessary to their performance. . . .

26 All Exercise participants should use appropriate guidelines to ensure
27 proper control of information within their areas of expertise and
28 protect this material in accordance with current
DOD/NORTHCOM/FBI/DOE/FEMA directives.

Public release of exercise materials to third parties is at the
discretion of NRNW.

1
2 19. Other documents provided to Kitsap Emergency Management contained similar
3 language emphasizing the confidentiality of the information relating to the exercises.
4 In addition, many documents themselves were marked for "OFFICIAL USE ONLY" and
5 contained warnings that they "may contain information that requires protection from
6 unauthorized disclosure" and not to disseminate "to anyone who does not have an official
7 need for access." Accordingly, there was no question that Kitsap Emergency Management
8 and other state and local agencies who participated in the training exercises, received
9 sensitive national security information with the understanding that the information was
10 confidential and the federal government retained control of its dissemination.

11 *Public Record Act Request to Kitsap County*
12 *Department of Emergency Management*

13 20. On January 15, 2015, Glen Milner ("Milner") submitted a request to Kitsap
14 Emergency Management under the Washington Public Records Act ("PRA"),
15 RCW 42.56.001 et seq. He sought all records "since January 1, 2012 regarding the
16 consequences of a radiological accident or similar event at the Naval Base Kitsap Bangor and
17 other U.S. Navy facilities, and emergency responses for such an event."

18 21. On April 29, 2015, the Kitsap County Prosecuting Attorney's Office sent a
19 letter to the NRNW Commander notifying the Navy that it had determined that there were
20 federal records responsive to Milner's request and advising that the responsive records would
21 be released unless the federal government obtained a court order enjoining the release of the
22 records. In response to the Navy's request, the County agreed to provide the federal
23 government with an opportunity to review the documents and provided the Navy with 356
24 documents consisting of approximately 6000 pages on May 18, 2015. The documents at issue
25 include PowerPoint presentations, reports, exercise plans and scenarios, spreadsheets listing
26 time lines for scenarios, contact lists, minutes of planning meetings, and emails. The Navy
27 and DTRA reviewed these documents to identify statutorily protected information, and
28

1 delivered a set of the records to the NNSA and the Chief Division Counsel at the Seattle
2 Division of the FBI for their review.

3 22. In June 2015, the United States Attorney's Office for the Western District of
4 Washington ("USAO") was asked by the Federal Agencies to become involved. In an effort
5 to narrow the issues in dispute, the Federal Agencies prepared an index of the documents
6 which was provided to Milner. Milner then agreed to narrow the records to those of interest
7 to him, eliminating approximately 49 documents from a total of 356.

8 23. From this narrowed set of records, the Federal Agencies focused first on
9 identifying records which did not contain any sensitive information involving national
10 security so that the County could immediately produce such records to Milner. The Federal
11 Agencies provided the County with a number of documents that could be released without
12 redaction, but the County did not provide all of these "cleared" documents to Milner. The
13 County was concerned that if it provided Milner with a record, such as an attachment to an
14 email that did not contain sensitive information, without also providing all the other
15 attachments to the email, as well as the email, the County might be subject to penalties
16 under the PRA for producing an "incomplete" document. Because of the County's concern
17 about violating the PRA, Milner would wait several more months before the Federal
18 Agencies, on their own, provided Milner with a set of the documents that could be released in
19 their entirety, together with redacted versions of the documents containing sensitive national
20 security information.

21 24. On September 22, 2015, the Federal Agencies provided the County a draft
22 *Vaughn* Index¹ listing the documents which needed to be withheld either in whole or in part,
23 and also provided the County a DVD with versions of documents that the Federal Agencies
24

25 ¹ The term *Vaughn* Index, comes from *Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973), *cert.*
26 *denied*, 415 U.S. 977 (1974), which held that in connection with FOIA litigation, an agency should
27 ordinarily provide an itemized index correlating each withheld document (or portion) with a specific
28 exemption justification. *Vaughn* Indexes are ordinarily provided after litigation ensues, not during
the administrative process.

1 proposed for release in redacted form. On October 2, 2015, the USAO provided the County
2 with a letter brief explaining in greater detail the bases for the Federal Agencies' withholdings
3 under both state and federal law.

4 25. The sensitive national security information that the federal agencies seek to
5 protect falls into two categories: (1) critical and sensitive national security information
6 regarding plans for responding to nuclear weapon accidents and incidents, and (2) the names
7 of certain federal employees with special technical knowledge and expertise related to
8 emergency response.

9 26. The County agreed to review these materials and respond to the Federal
10 Agencies' exemption claims.

11 27. The County did not provide Milner with copies of the cleared and redacted
12 documents because of its concern about violating the PRA. Therefore, while waiting for the
13 County to comment on their proposed withholdings, and after obtaining the County's
14 agreement, the Federal Agencies provided Milner with a set of the proposed redactions and
15 cleared records, and requested his comments.

16 28. On November 15, 2015, Milner complained about the format of the documents
17 he had received and made a number of demands about the level of detail he expected in the
18 format of a *Vaughn* Index. The Federal Agencies agreed to change the format of the
19 redactions to address Milner's concerns, and update the *Vaughn* Index to address Milner's
20 requests.

21 29. On November 30, 2015, while the Federal Agencies were attempting to prepare
22 updated redactions and an updated *Vaughn* Index to address Milner's requests, and without
23 ever addressing the Federal Agencies' substantive exemption claims, the County sent the
24 Federal Agencies a third-party notice informing them that the County would unilaterally
25 release the records containing federally-protected sensitive national security information to
26 Milner, and to Ed Friedrich, a reporter from the Kitsap Sun who had submitted a similar
27 request to the County on October 19, 2015, if the Federal Agencies did not, by December 16,
28 2015, obtain a Court Order enjoining the County from doing so.

RCW 42.56.540 Court protection of public records.

31. The PRA, RCW 42.56.540, authorizes third parties with an interest in the non-disclosure of records to bring injunctive actions against governmental entities to prevent such entities from releasing the records, if they can establish the records are protected either by PRA exemptions or by other non-disclosure statutes or by common law rights, and the disclosure of the records would irreparably damage vital governmental functions and not be in the public interest.

32. The release of the sensitive national security records at issue in this case would irreparably damage vital governmental functions performed by the Federal Agencies and would not be in the public interest.

34. The sensitive national security information at issue in this case constitutes “security information” exempted from mandatory disclosure by RCW 42.56.420. The very purpose of the NUWAIX exercises was to prepare, assess, plan and prevent a terrorist attack. Specifically, the records in this matter were prepared as part of multi-agency exercises that involved preparing for and mitigating the consequences of a terrorist attack involving a U.S. nuclear weapon. The purpose of the training was to evaluate and assess response times, and to establish an effective implementation and planning strategy for responding to terrorist attacks involving a nuclear weapon or special nuclear material in order to protect the public from the harm that could result from such incidents. Thus, the first prong of RCW 42.56.420 is met.

35. Pursuant to RCW 42.56.540, the United States is entitled to an Order from this Court barring the Defendants from releasing the sensitive national security information at issue in this case.

SECOND CAUSE OF ACTION

Unauthorized Release of UCNI

36. The United States realleges and incorporates by reference the allegations contained in paragraphs 1 through 35 of this Complaint.

37. The Department of Defense has determined that much of the sensitive national security information at issue in this case constitutes unclassified controlled nuclear information, known as UCNI, which is protected from disclosure by regulations promulgated by the Secretary of Defense pursuant to 10 U.S.C. § 128. *See* 32 C.F.R. Part 223.

38. The UCNI regulations provide that UCNI may be disseminated only on a “need-to-know basis for the conduct of official business for the Department of Defense.” 32 C.F.R. § 223.6(e)(1). The regulations prohibit “[t]he intentional or negligent transfer, in any manner and by any person of information contained in a document or material determined by a reviewing official to contain Department of Defense UCNI . . . to any person or entity other than an individual or entity authorized access to Department of Defense UCNI in accordance with 10 U.S.C. 128 and this part.” 32 C.F.R. § 223.3(k).

39. The sensitive national security information at issue in this case has been determined by reviewing officials at the Navy and DTRA to constitute UCNI as provided for by the Department's regulations. This information falls into the following categories: (1) information about the convoy route by which nuclear-capable missiles and warheads are transported on Navy property, and (2) incident response force information, including information about incident response force personnel, and the location or capacities of incident response force personnel, assets or equipment relied upon to respond to a radiological accident or incident.

40. Qualified experts have determined that release of the UCNI at issue in this case "could reasonably be expected to have a significant adverse effect on the health and safety of the public or common defense and security by significantly increasing the likelihood of . . . theft, diversion, or sabotage of special nuclear materials, equipment, or facilities," 10 U.S.C. § 128(a)(2). Further, such threats could negatively impact national security by impacting the Navy's ability to ensure the operability, reliability, safety and security of the TRIDENT missile system.

41. Because disclosure of the information identified as UCNI in the records Defendants are proposing to release would violate the UCNI non-disclosure regulations, the Federal Agencies are entitled to an injunction prohibiting Defendants from disclosing such information.

THIRD CAUSE OF ACTION
Critical Infrastructure Security Information
 10 U.S.C. §130e

42. The United States realleges and incorporates by reference the allegations contained in paragraphs 1 through 41 of this Complaint.

43. The Navy also has determined that many documents contain information meeting the definition of CISI which is subject to protection from disclosure under 10 U.S.C. § 130e. Section 130e defines CISI as "sensitive but unclassified information that, if disclosed, would reveal vulnerabilities in Department of Defense critical infrastructure that,

1 if exploited, would likely result in significant disruption, destruction, or damage of or to
2 Department of Defense operations, property or facilities.” 10 U.S.C. § 130e(c). The
3 definition of CISI includes “information regarding security and safeguarding of explosives,
4 hazardous chemicals, or pipelines, related to critical infrastructure or protected systems
5 owned or operated by or on behalf of the Department of Defense, including vulnerability
6 assessments prepared by or on behalf of the Department of Defense, explosive safety
7 information (including storage and handling), and other site-specific information on or
8 relating to installation security.” *Id.* The statute provides that the Secretary of Defense may
9 exempt CISI from the FOIA upon a written determination that “(1) the information in
10 question meets the definition of CISI in the statute, and (2) “the public interest consideration
11 in the disclosure of such information does not outweigh preventing the disclosure of such
12 information.” 10 U.S.C. § 130e(a). In addition, the statute expressly provides that CISI
13 protected under subsection (a) “that is provided to state and local governmental agencies shall
14 remain in the control of the Department of Defense.” *Id.* § 130e(b).

15 44. The Defendants are prohibited from disclosing the CISI because it remains
16 under Department of Defense control. Based on the review of the sensitive national security
17 information in this case, qualified experts at the Navy have determined that CISI information
18 at issue falls into two categories. First, the Navy seeks to protect information regarding
19 convoy routes. Disclosure of such routes could pose a direct threat to critical infrastructure
20 because, in the hands of a potential adversary, such information could be used to execute an
21 attack on specialized infrastructure on Naval Base Kitsap Bangor, including missile storage
22 and handling facilities and the security systems designed to protect those facilities.
23 Knowledge of the convoy route could allow a potential adversary to time its attack or target
24 its attack on a specific segment of the route. Second, the Navy seeks to protect information
25 about the nuclear weapon incident response force (including information about the personnel,
26 assets and equipment relied upon to respond to a nuclear weapon incident and their location).
27 Information pertaining to the location of incident response force personnel, assets and
28 equipment could provide an adversary with an advantage over the security force essential to

1 protecting the underlying infrastructure. By incapacitating installation security forces or
 2 exploiting information pertaining to response force capabilities, an adversary could tailor an
 3 attack to maximize harm to the critical infrastructure. Such threats to this critical
 4 infrastructure could negatively impact national security by impacting the Navy's ability to
 5 ensure the operability, reliability, safety and security of the TRIDENT missile system.

6 45. The CISI statute requires the Secretary of Defense or the Director of
 7 Administration and Management to make a written determination that "the public interest
 8 consideration in disclosure does not outweigh preventing the disclosure of such information."
 9 10 U.S.C. §130e(a). Although this determination has not yet been made, the Navy has made
 10 a preliminary determination, as required by Department of Defense policy, and is in the
 11 process of obtaining a formal determination from that Department. The Navy has submitted
 12 its formal request for a written determination to the Department of Defense. Accordingly, the
 13 information is putatively CISI, and until the Department of Defense completes its review and
 14 issues a written determination, it must be protected.

15 46. Defendants should be enjoined until the Director has had time to make a written
 16 determination that the information Defendants threaten to disclose constitutes CISI.

17 **FOURTH CAUSE OF ACTION**

18 *Replevin of Records owned by Federal Agencies*

19 47. The United States realleges and incorporates by reference the allegations
 20 contained in paragraphs 1 through 46 of this Complaint.

21 48. Pursuant to the CISI statute, which expressly provides that CISI shared with the
 22 state and local governmental agencies shall remain within the control of the Department of
 23 Defense, the United States holds an ownership interest in all CISI records. As a result of this
 24 statutory ownership interest in CISI, any right of the public to access to records containing
 25 CISI is not governed by state law, but is solely a matter of federal law under the Freedom of
 26 Information Act, 5 U.S.C. § 552. Without the express permission of the Department of
 27
 28

1 Defense (or a Department of Defense component, such as the Navy), the County is not at
2 liberty to release any CISI records pursuant to a request under a state statute such as the PRA.

3 49. Furthermore, in this case, the sensitive protected national security information
4 was created by the Federal Government and shared with Defendants with the explicit
5 condition that the County “protect this material in accordance with
6 DOD/NORTHCOM/FBI/DOE/FEMA directives” and that “[p]ublic release of the exercise
7 material to third parties is at the discretion of the NRNW.”

8 50. The sensitive protected national security information was provided to
9 Defendants with the understanding that the Federal Government retained control over its
10 dissemination.

11 51. The Federal Government maintains an ownership interest in documents such as
12 reports, presentations, minutes, and other non-email documents created by the federal
13 agencies and retained its property interest in the records when it shared the records with the
14 County.

15 52. Courts have recognized that the United States has the authority to enforce its
16 property interest in its records. *United States v. Napper*, 887 F.2d 1528, 1530 (11th Cir.
17 1989) (federal interest in control of information recognized, and city ordered to return records
18 to the FBI notwithstanding contrary obligation under state public disclosure law). The facts
19 here are similar. The Federal Agencies retained a non-disclosure interest in the records
20 exchanged with the Defendants, precluding Defendants from disclosing such records.

21 53. The United States is therefore entitled to a declaration that the CISI at issue in
22 this case is subject to the control of the Department of Defense, and the County should be
23 enjoined from releasing any and all sensitive national security information exchanged with
24 Kitsap Emergency Management without the express permission of the Navy.

25 **FIFTH CAUSE OF ACTION**
26 *Common Law Duty of Confidentiality*

27 54. The United States realleges and incorporates by reference the allegations
28 contained in paragraphs 1 through 53 of this Complaint.

55. Kitsap Emergency Management's participation in the NUWAIXs was expressly conditioned on its willingness to maintain the confidentiality of the information received from the Federal Agencies, and was specifically conditioned on its agreement that "[p]ublic release of the exercise material to third parties is at the discretion of the NRNW." All such information was provided to the County by the Federal Agencies with the express understanding that it would only be used for the purpose for which it was disclosed absent the express permission of the Navy.

57. Under federal common law, these express and implied understandings and the Federal Agencies reliance on them, create a duty of confidentiality enforceable in equity, similar the confidentiality obligations which adhere government professionals such as security officers, *see e.g., Snepp v. United States*, 445 U.S. 972 (1980), or in the private sector, to insurance companies, *see Hammons v. Aetna Casualty & Sec. Co.*, 243 F.Supp. 793 (1965); *see generally* Alan B. Vickery, Note, Breach of Confidence: An Emerging Tort, 82 Colum. L. Rev. 1426 (1982).

58. The Federal Agencies are therefore entitled to injunctive relief to enforce the County's confidentiality obligations not to disclose sensitive national security information to the public without the express permission of the Navy.

SIXTH CAUSE OF ACTION

Declaratory Judgment

59. The United States realleges and incorporates by reference the allegations contained in paragraphs 1 through 58 of this Complaint.

60. As an actual, substantial and justiciable controversy exists between the United States and Defendants regarding their respective obligations, the United States seeks a declaratory judgment under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, declaring any information determined by the Department of Defense or the Navy to be UCNI or CISI is exempt from the PRA; and declaring any records containing CISI are subject to the Freedom of Information Act, not the PRA, and cannot be released by the County without the express permission of the Department of Defense.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that judgment be entered in its favor and against Defendants as follows:

1. On the first cause of action, for an order permanently enjoining Defendants from releasing the national security information at issue in this case.
2. On the second cause of action, for an order permanently enjoining Defendants from releasing the UNCI at issue in this case.
3. On the third cause of action, for an order permanently enjoining Defendants from releasing the CISI at issue in this case.
4. On the fourth cause of action, for an order directing Defendants to deliver to the Federal Agencies all records and copies of records determined to have a federal ownership interest in this case.
5. On the fifth cause of action, for an order permanently enjoining Defendants from releasing any of the confidential information at issue in this case.
6. On the sixth cause of action, for an order declaring any information determined by the Department of Defense or the Navy to be UCNI or CISI is exempt from the PRA and any records containing CISI are subject to the Freedom of Information Act, not the PRA, and cannot be released without the express permission of the Department of Defense.

1
2
3 DATED this 14th day of December, 2015.

4 Respectfully submitted,

5 ANNETTE L. HAYES
6 United States Attorney
7

8 s/ Peter A. Winn
9 PETER A. WINN, WSBA#34701
10 KAYLA STAHPMAN, CA# 228931
11 Assistant United States Attorney
12 United States Attorney's Office
13 700 Stewart Street, Suite 5220
14 Seattle, Washington 98101-1271
15 Phone: 206-553-7970
16 Fax: 206-553-4067
17 E-mail: Peter.Winn@usdoj.gov
18 E-mail: kayla.stahman@udsdoj.gov
19
20
21
22
23
24
25
26
27
28